

### **REMARKS**

Claims 39-63 are now pending in the application. Claims 1-38 have been canceled. Claims 39-63 are new. The basis for the new claims may be found throughout the written description, drawings and claims as originally filed. The Examiner is respectfully requested to reconsider and withdraw the rejection(s) in view of the amendments and remarks contained herein.

Applicant would to thank the Examiner for the courtesy extended to Applicant's representative during a telephone message received on June 6, 2008. In this message, the Examiner indicated to Applicant's representative that the proposed claim amendments set forth in the first Amendment After Final filed on April 24, 2008 and the Second Amendment After Final filed on May 27, 2008 still do not place the application in condition for allowance. In response to the Examiner's suggestion, Applicant has filed herewith an RCE. The Examiner indicated that he would not be available to discuss potential claims to be filed in the RCE. However, the Examiner did indicate that he is receptive to discussing the claims of the RCE once filed. As such, Applicant looks forward to discussing the subject application at that time with the Examiner.

### **REJECTION UNDER 35 U.S.C. §112**

Claim 12 stands rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point and distinctly claim the subject matter which Applicant regards as the invention. This rejection is respectfully traversed.

Applicant notes that claim 12 has been canceled rendering this rejection moot. Applicant, therefore, requests reconsideration and withdrawal of this rejection.

## **REJECTION UNDER 35 U.S.C. §102**

Claims 1-20 and 31-38 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Pat. No. 7,255,702 (Serra). This rejection is respectfully traversed.

At the outset, Applicant notes that claims 1-38 have been canceled rendering this rejection moot. While new claims 39-63 have not been rejected, Applicant offers the following comments in an effort to expedite prosecution.

The most recent Office Action is silent on the limitation of a depth guide assembly. Applicant has reproduced Figs. 8 and 11 of Serra immediately below for reference.

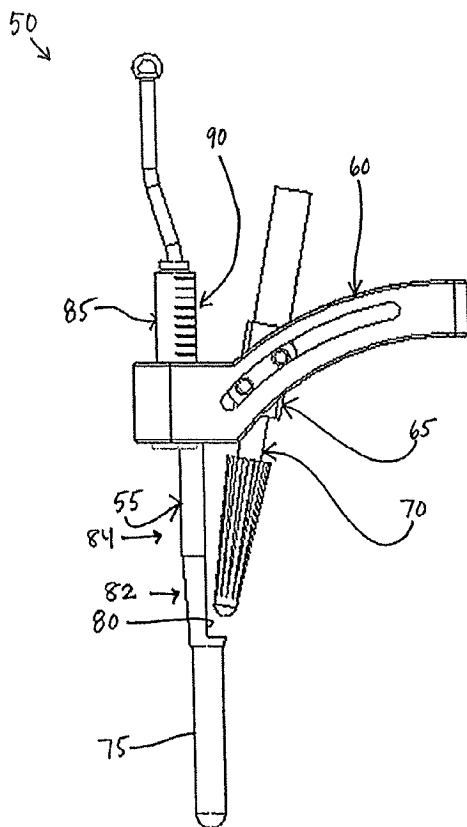


FIG. 8

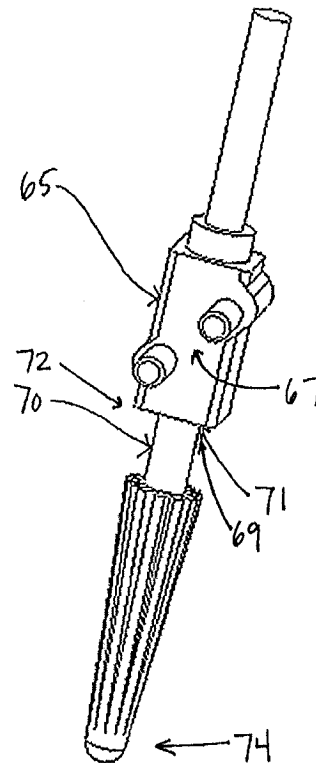


FIG. 11

Serra provides a milling instrument system 50 including a reference frame 55, a guidance support member 60, a reamer shuttle 65, and a cutting device 70. The cutting

device 70 is selectively attached to a rotational coupler 71 within the reamer shuttle 65. The cutting device 70 and the reamer shuttle 65 are constructed, such that the cutting device 70 is constrained within the reamer shuttle 65 so that the cutting device 70 rotates freely inside the reamer shuttle 65. See column 5, lines 12-16. During use, the cutting device 70 is constrained within a path set by the guidance support member 60. As the cutting device 70 rotates and follows the path provided by the guidance support member 60, the cavity is created in the bone. Applicant therefore submits that the depth of travel for the cutting device 70 is only controlled by the arcuate path formed in the guidance support member 60. Furthermore, nothing is provided in Serra for limiting axial movement of the cutting device 70 along its axis relative to the reamer shuttle 65.

In view of the foregoing, Applicant submits that all pending claims 39-63 present allowable subject matter over the art of record.


#### **CONCLUSION**

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance.

Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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